

1 AARON & PATERNOSTER, LTD.  
 2 MATTHEW E. AARON, ESQ.  
 3 Nevada Bar #004900  
 4 2300 W. Sahara Ave., Suite 650  
 5 Las Vegas, NV 89102  
 PH: (702) 384-4111  
 FX: (702) 384-8222  
 email: bk@aaronpaternoster.com  
 Attorneys for Debtor(s)

6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF NEVADA**

8 In re:	)	Chapter 13 Proceedings
	)	Case No: 10-19345-LBR
9 <b>MATTHEW LORNE EDDY and</b>	)	
<b>AMEE CHESTINA EDDY,</b>	)	
10	)	
11 Debtor(s).	)	DATE: 07/01/2010
	)	TIME: 3:00 p.m.

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12 **MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF**  
**CITIMORTGAGE, INC. PURSUANT TO 11 U.S.C. §506(a) AND §1322**

13 COMES NOW, Debtors MATTHEW LORNE EDDY and AMEE CHESTINA EDDY  
 14 ("Debtors"), by and through their attorney, MATTHEW AARON, of the law firm of AARON &  
 15 PATERNOSTER LTD., and hereby move this Court to modify the rights of CITIMORTGAGE,  
 16 INC. pursuant to 11 U.S.C. §506(a), and §1322, and Bankruptcy Rules 3012 and 9014. This Motion  
 17 is based on the following Memorandum of Points and Authorities, the attached Exhibits, all papers  
 18 and pleadings on file herein, and any other argument or evidence permitted by the Court.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 I.

21 **STATEMENT OF FACTS**

22 Debtors filed the instant Chapter 13, Case Number 10-19345-LBR, on or about May 20,  
 23 2010. On or about the petition date, Debtors owned real property located at or about 4505 Amherst  
 24 Lane, Las Vegas, Nevada 89107 ("Property"). The value of the Property is approximately  
 25 \$61,304.00<sup>1</sup>. At the time Debtors filed their Petition, and currently, the first mortgage held by  
 26 CITIMORTGAGE, INC. ("CITI") is in the approximate amount of \$217,350.00. The second  
 27

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28 <sup>1</sup> See copy of estimate from appraisal.com attached hereto as Exhibit A.

1 mortgage, held by CITIMORTGAGE, INC. ("CITI"), is in the approximate amount of \$49,304.00<sup>2</sup>.  
 2 On or about the date Debtors filed the instant bankruptcy, no equity existed in the Property above  
 3 the lien held by CITI for its first mortgage. CITI'S second mortgage claim was wholly unsecured  
 4 on the petition date and if the Property was sold at auction, CITI would receive nothing for said  
 5 second mortgage claim.

6 **II.**

7 **LEGAL ARGUMENT**

8 A wholly unsecured lien holder's claim can be modified and reclassified as a general  
 9 unsecured claim pursuant to 11 U.S.C. §506(a), despite the anti-modification language in  
 10 §1322(b)(2)<sup>3</sup>. The 9<sup>th</sup> Circuit reviewed and discussed *Nobelman v. American Savings Bank*, 508  
 11 U.S. 324 (1993) regarding claims "secured" by real property, and the subsequent majority and  
 12 minority interpretation and application thereof<sup>4</sup>. Based on its thorough analysis, the 9<sup>th</sup> Circuit  
 13 found the majority interpretation and application of *Nobelman* to 11 U.S.C. §506 and §1322  
 14 compelling and held:

15 Section 506(a) divides creditors' claims into 'secured . . . claims' and 'unsecured  
 16 claims.' Although the conventional interpretation of 'secured' might include any  
 17 claim in which the creditor has a security interest in the debtor's property, § 506 (a)  
 18 makes clear that the status of a claim depends on the valuation of the property. An  
 19 allowed claim of a creditor secured by a lien on property in which the estate has an  
 20 interest . . . is a secured claim to the extent of the value of such creditor's interest  
 21 in the estate's interest in such property . . . and is an unsecured claim to the extent  
 22 that the value of such creditor's interest . . . is less than the amount of such allowed  
 23 claim. Put more simply, a claim such as a mortgage is not a 'secured claim' to the  
 24 extent that it exceeds the value of the property that secures it. Under the Bankruptcy  
 25 Code, 'secured claim' is a term of art and not every claim that is secured by a lien  
 26 on property will be considered a 'secured claim'<sup>5</sup>.

27 Here, CITI'S second mortgage claim for the repayment is an unsecured claim because its  
 28 deed of trust is junior to the first deed of trust, and the value of the loan secured by the first deed  
 of trust is greater than the value of the Property. Because CITI'S second mortgage claim is wholly  
 unsecured (no equity exceeding the first mortgage on the Property exists), Debtors respectfully

27 <sup>2</sup>See Schedule D - Creditors Holding Secured Claims attached hereto as Exhibit B.

28 <sup>3</sup> *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002).

29 <sup>4</sup> *Id.*

30 <sup>5</sup> *Id.* at 1222-23.

1 request this Court classify CITI'S second mortgage claim to that of a general unsecured creditor to  
 2 be paid pro rata with like unsecured creditors. Additionally, Debtors request this Court strip CITI  
 3 of its secured rights, if any, for its second mortgage claim under State law because no maintainable  
 4 security interest in the Property exists as to the second mortgage. Furthermore, an adversary  
 5 proceeding is not required to obtain the relief requested herein. Debtors need only request the relief  
 6 sought herein by motion to "strip off" CITI'S consensual second mortgage/secured credit line lien<sup>6</sup>.

7 **III.**

8 **CONCLUSION**

9 WHEREFORE, based on the foregoing, Debtors respectfully request this Court: 1) "strip  
 10 off" and extinguish CITI'S wholly unsecured second mortgage lien pursuant to 11 U.S.C. §506(a)  
 11 upon completion of Debtors' Chapter13 Plan payments; 2) Reclassify CITI'S second mortgage  
 12 claim as a general unsecured claim to be paid pro rata with claims of other general unsecured  
 13 creditors through Debtors' Chapter 13 plan; and 3) other relief the Court deems just, equitable  
 14 and/or appropriate.

15 Dated this 1<sup>ST</sup> day of June 1, 2010.

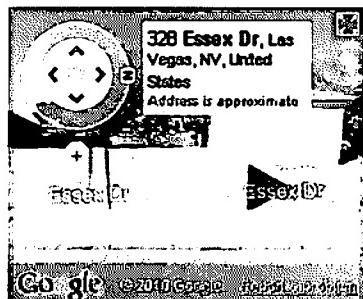
16 By: /s/ MATTHEW AARON  
 17 MATTHEW E. AARON, ESQ.  
 18 Nevada Bar #004900  
 19 2300 W. Sahara Avenue  
 Suite 650, Box 30  
 Las Vegas, NV 89102  
 Attorney for Debtor(s)

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27       <sup>6</sup>See *In re Williams*, 166 B.R. 615 (Bankr.E.D.Va.1994), *In re Fuller*, 255 B.R. 300  
 28 (Bankr.W.D.Mich.2000), *In re Hoskins*, 262 B.R.693 (Bankr.E.D.Mich.2001), *In re King*, 290  
 B.R.641 (Bankr.C.D.III.2003), *In re Millspaugh*, 302 B.R.90 (Bankr.D.Idahp2003), *Dickey v.*  
*Ben.Fin (In re Dickey)*, 293 B.R.360 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R.800  
 (Bankr.S.D.Ohio2003), *In re Sadala*, 294 B.R.180 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R.  
 544 (Bankr.W.D.N.Y.2003), *In re Robert*, 313 B.R.843 (Bankr.W.D.Ky.2004).

**EXHIBIT “A”**


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### Estimated Home Values:

**eppraisal** \$61,304

 **Zillow.com** \$120,000

 **cyberhomes** \$71,165

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[Bedrooms:](#) 3 [Bedrooms:](#) N/A

[Bathrooms:](#) 2.00 [Bathrooms:](#) N/A

[Square Footage:](#) 1350 [Square Footage:](#) N/A

[Year Built:](#) 1981 [Year Built:](#) N/A

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Address	Sales Price	Sale Date	Bed/Bath	Sq. Ft.
225 Kipling St Las Vegas, NV 89107	\$70,000	3/12/2010	3/2	1388
613 Mcdermit St Las Vegas, NV 89107	\$65,000	2/19/2010	3/2	1391
4805 Churchill Ave Las Vegas, NV 89107	\$46,000	1/4/2010	3/2	1407
4905 Churchill Ave Las Vegas, NV 89107	\$70,000	11/5/2009	3/2	1504
616 Brush St Las Vegas, NV 89107	\$58,000	12/9/2009	3/1	1348

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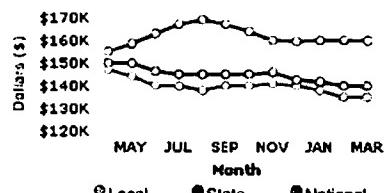
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[Home Data \(as of March\)](#)

Median Sales Price: \$135,000 0% (from last month)

Number of Sales: 926

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4505 Amherst Ln is in the 89107 ZIP code in Las Vegas, NV.

4505 Amherst Ln has approximately 1350 square feet. 4505

Amherst Ln has 3 bedrooms and 2.00 bathrooms. 4505

Amherst Ln was last sold on 2/15/2002. The estimated population in Las Vegas, NV is 1,342,454, and 64.4% of the population have children living in the home. The median age in Las Vegas, NV is 35 years old, and the median income is \$0.

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## **EXHIBIT “B”**

In re Matthew Lorne Eddy,  
Amee Christina EddyCase No. 10-19345

Debtors

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY	
				C	H	W	J	C
Account No. xxxxxx4983			Opened 1/29/07 Last Active 9/09/09 First Mortgage Residence 4505 Amherst Lane Las Vegas, NV 89107 *Stripping second mortgage, see section 6.02 in plan					
Citimortgage Inc Po Box 9438 Gaithersburg, MD 20898			Value \$ 69,690.00					217,350.00 147,660.00
Account No. xxxxxx1612			Opened 8/13/07 Last Active 9/01/09 Second Mortgage Residence 4505 Amherst Lane Las Vegas, NV 89107 *Stripping second mortgage, see section 6.02 in plan					
Citimortgage Inc Po Box 9438 Gaithersburg, MD 20898			Value \$ 69,690.00					49,304.00 49,304.00
Account No. xxxxxxxx0001			Opened 9/13/06 Last Active 10/02/09  Auto Laon  2006 Honda Odyssey					
Ibew Plus Credit Union 1900 S Jones Blvd Las Vegas, NV 89146			Value \$ 11,625.00					21,057.00 9,432.00
Account No. xxxxxxxx0002			Opened 5/16/08 Last Active 10/01/09  Auto Loan  2008 Harley Davidson Road King					
Ibew Plus Credit Union 1900 S Jones Blvd Las Vegas, NV 89146			Value \$ 11,750.00					18,512.00 6,762.00
Subtotal (Total of this page)						306,223.00	213,158.00	
Total (Report on Summary of Schedules)						306,223.00	213,158.00	

0 continuation sheets attached

## **CERTIFICATE OF SERVICE**

1. June 1, 2010, I served the following document(s)

**NOTICE OF HEARING ON MOTION TO VALUE COLLATERAL,  
"STRIP OFF" AND MODIFY RIGHTS OF CITIMORTGAGE, INC.  
PURSUANT TO 11 U.S.C §506(A) AND §1322; MOTION TO VALUE  
COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF CITIMORTGAGE,  
INC. PURSUANT TO 11 U.S.C. §506(A) AND §1322; [PROPOSED ORDER]**

2. I served the above-named document(s) by the following means to the persons as listed below:

- a. ECF System (You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary.)

Trustee Kathleen Leavitt: [courtsecf3@las13.com](mailto:courtsecf3@las13.com)

- b. United States mail, postage fully prepaid, addressed as follows:  
(List persons and addresses. Attach additional paper if necessary.)

**CERTIFIED MAIL:**

**CITIMORTGAGE, INC.**  
Agent, Officer or Managing Partner  
PO Box 9438  
Gaithersburg, MD 20898

**CITIMORTGAGE, INC.**  
The Corp. Trust Company of Nevada  
311 S. Division Street  
Carson City, NV 89703

## **Regular Mail:**

MATTHEW LORNE EDDY  
AMEE CHESTINA EDDY  
4505 Amherst Lane  
Las Vegas, Nevada 89107

- c. Personal Service (List persons and addresses. Attach additional paper if necessary)

I personally delivered the document(s) to the persons at these addresses:

- For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the documents(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the documents(s) in a conspicuous place in the office.

- o For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

o d. By direct email (as opposed to through the ECF System) (List persons and email addresses. Attach additional paper if necessary)

1       Based upon the written agreement of the parties to accept service by email or a court  
order, I caused the document(s) to be sent to the persons at the email addresses listed below.

2       I did not receive, within a reasonable time after the transmission, any electronic message  
3       or other indication that the transmission was unsuccessful.

4           o     e. By fax transmission (List persons and fax numbers. Attach additional paper if  
necessity)

5       Based upon the written agreement of the parties to accept service by fax transmission or  
6       a court order, I faxed the document(s) to the persons at the fax numbers listed below. No  
7       error was reported by the fax machine that I used. A copy of the record of the fax  
transmission is attached.

8           o     f. By messenger (List persons and addresses. Attach additional paper if necessary) I  
9       served the document(s) by placing them in an envelope or package addressed to the persons  
at the addresses listed below and providing them to a messenger for service. (A declaration  
by the messenger must be attached to this Certificate of Service,).

10      I declare under penalty of perjury that the foregoing is true and correct.

11      Signed on: June 1, 2010.

12        
13      An employee of Aaron & Paternoster, Ltd

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AARON & PATERNOSTER, LTD.  
MATTHEW E. AARON, ESQ.  
Nevada Bar #004900  
2300 W. Sahara Ave., Suite 650  
Las Vegas, NV 89102  
(702) 384-4111  
email: bk@aaronpaternoster.com  
Attorneys for Debtor(s)

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

In re: ) Chapter 13 Proceedings  
MATTHEW LORNE EDDY and ) BK-S-10-19345-LBR  
AMEE CHESTINA EDDY, )  
Debtor(s) ) Date: 07/01/2010  
Time: 3:00 p.m.

**ORDER TO VALUE COLLATERAL; ORDER TO AVOID LIEN**

THIS MATTER having come before the Court for a hearing on July 1, 2010, on Debtors' MOTION TO VALUE COLLATERAL; MOTION TO AVOID LIEN, and based upon the papers and pleadings on file herein, and good cause appearing; the Court finds as follows:

1. The Debtors' principal residence located at 4505 Amherst Lane, Las Vegas, Nevada 89107 (the "Subject Property") is valued at \$61, 304.00 as of the date of Debtors' Chapter 13 Petition.
2. The Subject Property is collateral for a senior secured claim of CITIMORTGAGE, INC. ("Senior Lienholder").

**[Check only one box, and fill in blanks]**

- Senior Lienholder has filed a Proof of Claim [insert proof of claim]

number] related to such claim, and such Proof of Claim claims a debt of [\$claim amount]. Senior Lienholder's Proof of Claim indicates that Senior Lienholder has assigned [insert account #] to this claim.

[or]

**X** Senior Lienholder has *not* filed a Proof of Claim related to its claim, but has assigned account number xxxxxx4983 to this claim. The Debtors' schedules list the amount of Senior Lienholder's claims as \$217,350.00.

3. The Subject Property is also collateral for a junior secured claim of CITIMORTGAGE, INC. (“Junior Lienholder”).

**[Check only one box, and fill in blanks]**

- Junior Lienholder has filed a Proof of Claim [insert proof of claim number] related to such claim, and such Proof of Claim claims a debt of [\$claim amount]. Junior Lienholder's Proof of Claim indicates that Junior Lienholder has assigned [insert account #] to this claim.

[or]

Junior Lienholder has *not* filed a Proof of Claim related to its claim, but has assigned account number xxxxxx1612 to this claim. The Debtors' schedules list the amount of Junior Lienholder's claims as \$49,304.00.

4. Given the above, Junior Lienholder's interest in the Debtors' interest in the Subject Property has no value.

THEREFORE, IT IS HEREBY ORDERED THAT, pursuant to *Zimmer v. PSB Lending*

Corp. (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002), and 11 U.S.C. §§ 506(a) and 506(d), Junior Lienholder's claim is unsecured, and shall be treated as unsecured for all purposes in this case, including the manner in which such claim is treated and paid in Debtors' chapter 13 plan; and

**IT IS FURTHER ORDERED THAT**, should Debtors receive a discharge in this case, Junior

Lienholder shall as soon as practicable thereafter take all necessary and appropriate steps to remove its lien of record, and to ensure that Debtors' title to the Subject Property is clear of any cloud on title related to Junior Lienholder's claim. This court hereby reserves jurisdiction with respect to any

1 dispute over the actions necessary to comply with this paragraph; and

2 IT IS FURTHER ORDERED THAT, should this case be converted to one under another  
3 chapter, 11 U.S.C. § 348(f) shall govern the continued validity of this order; and

4 IT IS FURTHER ORDERED THAT, should this case be dismissed, 11 U.S.C. § 349(b)(1)-  
5 (3) shall govern the continuing validity of this order; and

6 IT IS FURTHER ORDERED THAT nothing in this order shall be deemed to be an allowance  
7 or disallowance of any claim of Senior Lienholder or Junior Lienholder, and any party in interest,  
8 including the Debtor or the Trustee, may hereafter object to either claim on any ground recognized  
9 by the Bankruptcy Code.

10 DATED: June 1, 2010.

11 Respectfully,

12 AARON & PATERNOSTER, LTD.

13  
14 By: /s/ MATTHEW E. AARON  
15 MATTHEW E. AARON, ESQ.  
16 Nevada Bar #004900  
2300 W. Sahara Avenue, Suite 650  
Las Vegas, NV 89102  
17 Attorneys for Debtor(s)

18 In accordance with LR 9021, counsel submitting this document certifies as follows  
(check one):

19  The court has waived the requirement of approval under LR 9021.

20  This is a Chapter 7 or 13 case, and either with the motion or at the hearing, I have  
21 delivered a copy of this proposed order to all counsel who appeared at the hearing, any  
22 unrepresented parties who appeared at the hearing, and each has approved or disapproved the  
23 Order, or failed to respond, as indicated below [list each party and whether the party approved,  
24 disapproved, or failed to respond to the document]:

25  This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed  
26 order to all counsel who appeared at the hearing, any unrepresented parties who appeared at  
27

the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

I certify that I have served a copy of this order with the motion and no parties appeared or filed written objections.

### **Approved/Disapproved/Failed to Respond**

By: \_\_\_\_\_  
Kathleen Leavitt, Chapter 13 Trustee